

MAXIMO GUIDOTE, PLAINTIFF AND APPELLANT, VS. ROMANA BORJA, AS ADMINISTRATRIX OF THE ESTATE OF NARCISO SANTOS, DECEASED, DEFENDANT AND APPELLEE.*G.R. No. 28920, October 24, 1928*

Ponente: OSTRAND, J.

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On March 4, 1921, the plaintiff brought an action against the administratrix of the estate of Narciso Santos, deceased, to recover the sum of P9,534.14, a part of which was alleged to be the net profits due the plaintiff in a partnership business conducted under the name of "Taller Sinukuan," in which the deceased was the capitalist partner and the plaintiff the industrial partner, the rest of the sum consisting of advances alleged to have been made to said partnership by the plaintiff. The defendant in her answer admitted the existence of the partnership and in a cross-complaint and counter-claim prayed that the plaintiff be ordered to render an accounting of the partnership business and to pay to the estate of the deceased the sum of P25,000 as net profits, credits, and property pertaining to said deceased.

In the first trial of the case the plaintiff called several witnesses and introduced a so-called accounting and a mass of documentary evidence consisting of books, bills, and alleged vouchers, which documentary evidence was so hopelessly and inextricably confused that the court, as stated in its decision, could not consider it of much probative value. It was, however, found as facts that the aforesaid partnership had been formed, on or about June 15, 1918; that Narciso Santos died on April 6, 1920, leaving the plaintiff as the surviving partner; and that plaintiff failed to liquidate the affairs of the partnership and to render an account thereof to the administratrix of Santos' estate. The court, therefore, dismissed the plaintiff's complaint and absolved the defendant therefrom, and ordered the plaintiff to render a full and complete accounting, verified by vouchers, of the partnership business from June 15, 1918, until September 1, 1922. To this decision and order the plaintiff duly excepted.

The plaintiff thereupon rendered an account prepared by one Tomas Alfonso, a public accountant. Numerous objections to said account were presented by the defendant, and the court, upon hearing, disapproved the account and ordered that the defendant submit to the court an accounting of the partnership business from the date of the commencement of the partnership, June 15, 1913, up to the time the business was closed.

On January 25, 1924, the defendant presented an account and liquidation prepared by a public accountant, Santiago A. Lindaya, showing a balance of P29,088.95 in favor of the defendant. The account was set down for hearing upon the question of its approval or disapproval by the court, at which hearing the defendant introduced the public accountant Jose Turiano Santiago to testify as to the results of an audit made by him of the accounts of the partnership. Santiago testified that he had been a public accountant for over 20 years, having appeared in court as such on several occasions; that he had examined the exhibits offered in evidence of the case by both parties; that he had prepared a separate accounting or liquidation similar in results to that prepared by Lindaya, but with a few differences in the sums total; and that according to his examination, the financial status of the partnership was

as follows:

Narciso Santos is a creditor of the Taller Sinukuan in the sum of P26,020.89 consisting as follows:

For his capital P12,588.58

For his credit 10,384.30

For his share of the profits 3,068.06

Total P26,020.89

Maximo Guidote is a debtor to the Taller Sinukuan in the sum of P26,020.89, consisting as follows:

For his debit (debito) P29,088.95

Less his share of the profits 3,068.06

Total balance 26,020.89

In order to contradict the conclusions of Lindaya and Jose Turiano Santiago, the plaintiff presented Tomas Alfonso and the bookkeeper, Pio Gaudier, as witnesses in his favor. In regard to the character of the testimony of these witnesses, His Honor, the trial judge, says:

"The testimony of these two witnesses is so unreliable that the court can place no reliance thereon. Mr. Tomas Alfonso is the same public accountant who filed the liquidation Exhibit O on behalf of the plaintiff, in relation to the partnership business, which liquidation was disapproved by this court in its decision of August 20, 1923. It is also to be noted that Mr. Alfonso would have this court believe the proposition that the plaintiff, a mere industrial partner, notwithstanding his having received the sum of P21,649.61 on the various jobs and contracts of the "Taller Sinukuan," had actually expended and paid out the sum of P68,360.27, or P44,710.66 in excess of the gross receipts of the business. This proposition is not only improbable on its face, but it materially contradicts the allegations of plaintiff's complaint to the effect that the advances made by the plaintiff only amount to P2,017.50.

"Mr. Pio Gaudier is the same bookkeeper who prepared three entirely separate and distinct liquidation for the same partnership business, all of which were rejected by the court in its decisions, of September 1, 1922, and the court finds that the testimony given by him at the last hearing is confusing, contradictory and unreliable."

As to the other witnesses for the plaintiff His Honor further says:

"The testimony of the other witnesses for the plaintiff deserves but scant consideration as evidence to overcome the testimony of Mr. Santiago, as a whole, particularly that of the witness Chua Chak, who, after identifying and testifying as to a certain exhibit shown him by counsel for plaintiff, showed that he could neither read nor write English, Spanish or Tagalog, and that of the witness Mr. Claro Reyes, who, after positively assuring the court that a certain exhibit tendered him for identification was an original document, was forced to admit that it was but a mere copy."

The court, therefore, found that the conclusions reached by Santiago A. Lindaya as modified by Jose Turiano Santiago were just and correct and ordered the plaintiff to pay the defendant the sum of P26,020.89, Philippine currency, with legal interest thereon from April 2, 1921, the date of the defendant's answer, and to pay the costs. From this judgment the plaintiff appealed to this court and presents the following assignments of error:

(1) That the court erred in dismissing the plaintiff's complaint and ordering him to present a liquidation of the operations and accounts of the partnership formed with the deceased Narciao Santos, from the beginning of the partnership until September 1, 1922.

(2) That the court erred in approving the liquidation made by the public accountant Santiago A. Lindaya, with the modification introduced by the witness Jose Turiano Santiago.

(3) That the court erred in ordering the plaintiff and appellant to pay to the defendant and appellee the sum of P26,020.89.

As to the first assignment of error there may be some merit in the appellant's contention that the dismissal of his complaint was premature. The better practise would, perhaps, have been to let the complaint stand until the result of the liquidation of the partnership affairs was known. But under the circumstances of this case no harm was done by the dismissal of the complaint, and the error, if any there be, is not reversible.

Under the same assignment of error the plaintiff argues that as the deceased up to the time of his death generally took care of the payments and collections of the partnership, his legal representatives were under the obligation to render accounts of the operations of the partnership, notwithstanding the fact that the plaintiff was in charge of the business subsequent to the death of Santos. This argument is without merit. In the case of *Wahl vs Donaldson Sim & Co.* (5 Phil., 11,14), it was held that the death of one of the partners dissolves the partnership, but that the liquidation of its affairs is by law intrusted, not to the executors of the deceased partner, but to the surviving partners or to liquidators appointed by them (citing article 229 of the Code of Commerce and sees. 664 and 665 of the Code of Civil Procedure). The same rule is laid down by the Supreme Court of Spain in sentence of October 12, 1870.

The other assignments of error have reference only to questions of fact in regard to which the findings of the court below seem to be as nearly correct as possible upon the evidence presented. There may be errors in the interpretation of the accounts, and it is possible that the amount of P26,020.89 charged against the plaintiff is excessive, but the evidence presented by him is so confusing and unreliable as to be practically of no weight and cannot serve as a basis for a readjustment of the accounts prepared by the accountant Lindaya and the apparently reliable witness, Jose Turiano Santiago.

We should, perhaps, have been more inclined to question the conclusions of Lindaya and Santiago if the plaintiff had shown a disposition to render an honest account of the business and to effect a fair liquidation of the partnership, but instead of doing so, he has by means of very questionable, and apparently false, evidence sought to mulct his deceased partner's estate to the extent of over P9,000. The rule for the conduct of a surviving partner is thus stated in 20 R. C. L., 1008:

"In equity surviving partners are treated as trustees of the representatives of the deceased partner, in regard to the interest of the deceased partner in the firm. As a consequence of this trusteeship, surviving partners are held in their dealings with the firm assets and the representatives of the deceased to that nicety of dealing and that strictness of accountability required of and incident to the position of one occupying a confidential relation. It is the duty of surviving partners to render an account of the performance of their trust to the personal representatives of the deceased partner, and to pay over to them the share of such deceased member in the surplus of firm property, whether it consists of real or personal assets."

The appellant has completely failed to observe the rule quoted, and he is not in position to complain if his testimony and that of his witnesses is discredited.

The appealed judgment is affirmed with the costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Romualdez, and Villa-Real, JJ., concur.

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